IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.64 of 1993

Date of decision: 14 .11. 2007.

State of H P. Appellant

-vs-

Kashmir Singh and another. Respondents

Coram

Hon'ble Mr. Justice Surjit Singh, J.

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]?

For the appellant : Mr. S.D. Vasudeva, Addl. Advocate General with Mr. D.S. Nainta, Deputy Advocate General.

For the respondents : Mr. Ajay Sharma, Advocate.

Surjit Singh, J (oral):

Heard and gone through the record. The respondents were sent up for trial for an offence punishable under Section 306 read with Section 34, Indian Penal Code, for allegedly abetting the commission of suicide by Smt. Suknya Devi, wife of respondent Kashmir Singh and daughter-in-law of respondent Savitri Devi. The marriage of deceased Suknya Devi with respondent Kashmir Singh had taken place in November, 1985. At the time of marriage, Kashmir Singh was employed at Ludhiana. Two/three years after the marriage, Kashmir Singh returned to the village and started living with his parents and wife. On 25.10.1989, Suknya Devi committed suicide by consuming aluminium phosphide. Report was lodged with the Police by a brother of Suknya Devi, namely Jaram Singh (PW3). The report was recorded in the form of his statement, under Section 154 of the Code of Criminal Procedure and the same is Exhibit P7. In the report, it was alleged

[1] Whether reporters of the Local papers are allowed to see the judgment?

that about three months prior to her death, the deceased had visited the witness and returned to the matrimonial home the same very day and that when he accompanied the deceased on her way back home up to the bus stop, she told that her mother-in-law Savitri Devi, her sister-in-law Rashmo Devi and brother-in-law Kartar Chand (younger brother of respondent Kashmir Singh) nagged her and taunted her that ever since her entry to their house, they had not experienced any joy and whatever little was earned by her husband, she consumed the same on meals. He further reported that two days prior to the commission of the suicide by the deceased, he again met her in her husband's village and at that time she started crying on seeing him and on being asked the cause of her crying, she told that her mother-in-law, i.e, respondent Savitri Devi, had separated her and her husband from the joint family. Police registered a case on the basis of the aforesaid statement.

During the course of investigation, the prosecution recorded statements of two nephews Kishori Lal (PW4) and Rai Chand (PW5) of the deceased and three neighbours of the accused, who stated that the deceased used to be given beatings by respondent Kashmir Singh and also his mother Savitri Devi, the second respondent.

On being challaned, the respondents were charged with an offence, under Section 306 read with Section 34 I.P.C.

The prosecution examined fifteen witnesses to bring the charge home. The witnesses examined by the prosecution included Jaram Singh (PW3) the brother of the deceased, Kishori Lal (PW4) and Rai Chand (PW5), both nephews of the deceased, Vyasan Devi (PW6) a neighbour of the accused, Satya Devi (PW7) another neighbour of the deceased and Duni Chand (PW11) the husband of PW7 Satya Devi.

Even though all the above named witnesses stated that the deceased used to be subjected to beatings by the two respondents, the trial

Court dis-believed their version because in the F.I.R. there was no allegation of beating of the deceased by the two respondents nor was respondent Kashmir Singh even named as an accused and instead the accusation was made exclusively against respondent Savitri Devi, her son Kartar Chand younger brother of respondent Kashmir Singh and her daughter Reshmo Devi. Jaram Singh (PW3) was duly confronted with the statement, under Section 154 of the Code of Criminal Procedure, Exhibit P7, wherein there is no mention of beating of the deceased by either of the two respondents or Kartar Chand and Reshmo Devi and also there is no allegation of even harassment of the deceased at the hands of the respondent Kashmir Singh. He stated that he had narrated to the Police at the time of making the statement Exhibit P7 that respondent Kashmir Singh and respondent Savitri Devi used to give beatings to the deceased. But as already noticed in the said statement there is no such mention. The witness himself proved the statement Exhibit P7 & testified that it was the same statement which he made to the Police and which he signed after it was recorded.

The other witnesses as also Jaram Singh (PW3) testified that the deceased used to be given beatings on the pretext that she was short statured and did not know any house hold work. In the report Exhibit P7, this fact also does not find mention. The story regarding the cause of alleged beatings appears to be an after-thought. The post mortem examination report shows that the deceased was not short statured. She was a lady of normal height. Her height was five feet one inch.

Allegation that the deceased used to be subjected to physical cruelty by being given beatings is negatived by the post mortem report also, because no mark of any recent or old violence was found on the dead body. Even if it be assumed for the sake of argument, that the deceased used to be given beatings that cannot be treated as abetment to the

commission of suicide by her unless it is shown that soon before the commission of the act of suicide also she was given beating or subjected to cruelty. In other words, there should be close proximity between the alleged cruelty and commission of suicide.

For the foregoing reasons, we find no merit in the present appeal. Hence the same is dismissed.

(Surjit Singh)
Judge.

(Surinder Singh)
Judge.

November 14, 2007.
(bm)

(Surjit Singh)
Judge

(Surinder Singh)
Judge.

November 14, 2007.
(bm)